IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1622 OF 2006
IN
WRIT PETITION NO.6879 OF 2004

Cosmos Co-operative Bank Ltd. ..Petitioner.
Vs.
Shailesh Madhav Joshi ..Respondent/
Applicant.

...

Mr. Jaiprakash Sawant for the Petitioner.
Mrs. Meena H. Doshi for the Respondent – Applicant.

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CORAM: DR. D.Y. CHANDRACHUD, J.

13th July, 2006.

P.C. :

1. The Central Government Industrial Tribunal on a reference under Section 10 of the Industrial Disputes Act, 1947 passed an award on 6th July, 2004 allowing reinstatement with 50% back wages to the workman. The contention of the employer is that the workman had voluntarily resigned from service. That has not been accepted by the Tribunal. This Petition filed by the management was admitted on 21st August, 2004 and an interim stay of the award was granted subject to the condition that the

management deposits the back wages awarded before this Court within a period of four weeks. The workman was given liberty to withdraw the back wages subject to furnishing security to the satisfaction of the Registrar General. The Court is informed that the workman has been unable to furnish any security. Consequently the back wages which have been deposited have been invested in pursuance of the directions contained in the interim order.

2. The management made an offer to the workman in pursuance of which he was taken back in service from 1st July, 2005 without prejudice to the rights and contentions in the Petition. However, though the workman is now working as a Passing Officer with the Bank, he is still being paid only the equivalent of what he would have received under Section 17-B of the Industrial Disputes Act, 1947. In fact, it would be material to note that an application under Section 17-B that was made by the workman was allowed by a Learned Single Judge of this Court on 15th April, 2005. It was thereafter that the management offered to take the workman back on duty and accordingly the workman has reported for work on and after 1st July, 2005. The grievance of the applicant workman is that

his basic wages have been fixed at Rs.1,010/- per month and he has not been allowed the benefit of a subsequent revision in wages. On behalf of the management it has been submitted that there is a distinction between reinstatement and a decision of the management to allow the workman to resume duties pending the disposal of the Petition. Learned counsel submitted that if at this stage the workman is held entitled to his full salary, the distinction between Section 17-B wages and the wages which would be payable to a workman on reinstatement would be obliterated.

3. Section 17-B is postulated on the foundation that during the period when a workman who has been allowed reinstatement by the Labour Court, Tribunal or National Tribunal is kept out of work during the pendency of proceedings before the High Court or the Supreme Court, the workman should not by virtue of the delay in the proceedings be subjected to a situation in which he would virtually find it impossible to survive. In the circumstances, the legislature has introduced a provision in which the wages which were last drawn by the workman including the maintenance allowance that was admissible to him are to be paid by the employer so long as the worker has not been employed in any

establishment during the period. An order under Section 17-B has in fact been passed in these proceedings. The employer was under no obligation to pay anything more in addition to wages under Section 17-B, if he sought to take the benefit of the interim order, staying reinstatement, that was passed by this Court on 23th August, 2004. However, once the employer offers to take the workman back in service, albeit without prejudice to his rights and contentions in the Petition, he cannot be heard to say that while the workman would render normal work in his establishment he would pay to the workman no more than what he is entitled to under Section 17-B. Once the workman is taken back on work and is required to perform his duties, he is entitled to be compensated for the work which has been rendered by him in accordance with the terms and conditions of service which prevail in respect of such work done by any other workman. No distinction can then be made between such a workman who is taken back on duty and any other workman merely on the basis of the fact that the order of reinstatement has been stayed. It is open to the employer to contend that in view of the stay of reinstatement, he is neither bound to take the workman back on duties nor to pay him anything in excess of what the statute mandates under Section 17-B.

However, having taken the workman back on work, the employer must pay to him what he is liable to pay for such work done in his establishment by any other workman in accordance with the conditions of service.

4. Counsel appearing for the management has made a suggestion that the management would deposit the difference between the wages under Section 17-B and the entitlement of a workman who is rendering similar work before this Court. In my view, it is neither fair nor appropriate that though the workman continues to work as a Passing Officer, he should be paid only on the basis of the last drawn wages. The suggestion of the management will lead to disastrous consequences particularly in view of the fact that a long period of time normally elapses between the date of the termination and the order of the Labour Court or the Tribunal. In a case like the present, it cannot be expected that while the workman on being taken back must render normal duties, he would receive from the employer only what was last drawn by him in terms of his wages.

5. In the circumstances, this Civil Application is disposed of

by directing the management to pay to the workman during the pendency of the proceedings and so long as the workman is called upon to discharge his duties an amount equivalent to what a similarly placed worker in the same scale and for the same work is entitled to receive. The hearing of the Petition is however, expedited. Having regard to the facts and circumstances of the case, the Petition shall be listed for hearing and final disposal in the week commencing 4th September, 2006.